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June 28

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CONCORD, N.H.

Honorable Lane Dwinell, Governor  
Executive Department  
State House  
Concord, New Hampshire

Dear Governor Dwinell:

This is in response to your letter of June 20, which raises two questions currently confronting the Governor's Nautical Advisory Committee.

1. The first question involves a definition of the jurisdiction of The State of New Hampshire and of the United States government relative to the regulation of boating. The Public Utilities Commission, under RSA 270, is given broad regulatory authority in this respect. Persons operating commercial or private boats upon any of the waters of this State except tidal waters (RSA 270:3), must obtain registration from the Commission (RSA 270:5). In addition the Commission, consistent with the policy of the chapter, is authorized to make rules and regulations relative to the equipment and operation of boats (RSA 270:11) and relative to horsepower and speed limitations, RSA 270:12.

Section 270:1 contains the declaration of policy which in part provides that "in the interest of public safety and the protection of property it shall be the duty of the public utilities commission, in all cases not provided for in the United States inspection laws and in all cases where inspections are not regularly made thereunder, to provide for the inspection of any public waters of the state ...." (emphasis added). The same section refers to the installation of lights and buoys on the inland waters of the State. From the foregoing it appears that with respect to the inland waters of the State the Public Utilities may regulate boating in the absence of active regulation by the federal government, and that the field of permissive federal regulation is limited to navigable waters of an interstate nature. We are of the opinion that chapter 270 does not apply to tidal waters for the following reasons: (1) the exclusion in the case of boats operated in tidal waters from the registration requirements of RSA 270:1; (2) the definition in RSA 271:20 of public waters as "all natural bodies of fresh water having an area of twenty acres or more . . ." (emphasis added); (3) the fact that jurisdiction of certain harbors is vested in other state agencies (this will be discussed later); and (4) the fact that the declaration of policy to which reference has previously been made refers to navigational guides on inland waters. This

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Honorable Lane Dwinell

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is consistent with the prohibition contained in federal law, (14 United States Code 83) against the unauthorized establishment or erection by any person including public bodies of aids to maritime navigation.

It should be noted, however, that with reference to Hampton Harbor, and the Hampton River, Little Harbor and the inlets thereto, and Eye Harbor, the Forestry and Recreation Commission is authorized to appoint harbor masters. RSA 270:12, 13. Said harbor masters are empowered with the approval of said Commission to make reasonable rules and regulations relating to navigation.

2. The second question relates to the authority of state and local law enforcement officers to apprehend and prosecute persons violating Public Utility Commission regulations relating to boating.

Although RSA 270:11 provides that "it shall be the duty of the commission to enforce the provisions of this chapter and the rules and regulations issued thereunder", we do not interpret this section as conferring exclusive jurisdiction on the Public Utilities Commission. Since penalty is provided in RSA 270:13 for violation of these rules and regulations we believe that violations constitute a misdemeanor which may be prosecuted by local law enforcement officers as well as by the Commission.

Mrs. Miner was in the office Tuesday and indicated that your second question was prompted by the fact that such violations occur on the public waters of the State and that there was some doubt as to whether the jurisdiction of local police officers extended below the high water mark. We are of the opinion that it does. Although bodies of fresh water in excess of twenty acres are public waters and are held in trust by the State for the public use, the jurisdictional limits of towns and cities do not end at the high water mark but extend to the actual town boundary.

I am enclosing extra copies of this letter in the event that you wish to send them along to your Nautical Advisory Committee.

Very truly yours,

Elmer T. Bourque  
Assistant Attorney General

STB/lr  
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